# **CALIFORNIA COASTAL COMMISSION**

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Hearing Date:
Commission Action:

June 2, 2008 July 21, 2008 November 29, 2008 Fernie Sy-LB August 21, 2008 September 10-12, 2008

# STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-08-015

APPLICANT: Rudy La Londe

AGENTS: Marshall Ininns Design Group, Attn: Marshall Ininns

**PROJECT LOCATION:** A-107 Surfside, City of Seal Beach (County of Orange)

**PROJECT DESCRIPTION:** Demolition of an existing single-family residence and construction of a new ocean-fronting, 3,254 square foot, three-story single-family residence and 505 square feet of seaside deck/patio areas and an attached 420 square foot two (2)-car garage. The decks and patio will extend a maximum 10-feet seaward, beyond the property boundary, into land that is leased by the Surfside Colony to the applicant. Grading will consist of 123 cubic yards for recompaction, which will balance on site. Additionally, the applicant is requesting an after-the-fact approval to move their seaward property line 0.90 feet seaward which will add a 25' (I) x 0.90' (w) portion of land to the seaward side of the property.

**LOCAL APPROVALS RECEIVED:** Approval-In-Concept dated January 14, 2008 from the City of Seal Beach Planning Department and Variance 07-5 from the City of Seal Beach Planning Commission.

#### **SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing the demolition of an existing single-family residence and construction of a new beach fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events

Staff is recommending <u>APPROVAL</u> of the proposed project with **NINE** (9) **SPECIAL CONDITIONS** regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) future development; 4) evidence of conformance with geotechnical recommendations; 5) that the applicant agrees to remove the patio and decks if Surfside Colony, Ltd. ever proposes a protective device to protect the patio and decks; 6) conformance with the submitted drainage and run-off control plan; 7) conformance with landscaping controls; 8) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report; and 9) condition compliance.

The proposed development includes elements that are on the applicant's property (the residence) and elements that are on property owned by Surfside Colony, Ltd. (the ground level patio) or cantilevered over property owned by Surfside Colony, Ltd. (the second and third floor decks). In prior approvals the Commission had required Surfside Colony, Ltd. to execute lease restrictions acknowledging the restrictions outlined in **SPECIAL CONDITIONS NO. 1, 2** and **3** above. However, Surfside Colony, Ltd. has refused to execute such lease restrictions and the applicants

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were unable to obtain release of their coastal development permits. As an alternative, the Commission accepted a prior applicant's proposal [CDP No. 5-00-257-(Cencak)] to eliminate the requirement for the lease restrictions and add a Special Condition that requires the owner of the residential property to remove the development on Surfside Colony, Ltd. land if Surfside Colony, Ltd. were to seek shoreline protection measures to protect the development on their land that is approved by this permit. This approach has been continued by the Commission on subsequent Surfside Colony approvals. **SPECIAL CONDITION NO. 5** would implement this same requirement at the subject property in lieu of the lease restrictions, which the Commission would normally require the applicant to obtain from Surfside Colony, Ltd.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

**SUBSTANTIVE FILE DOCUMENTS:** *Preliminary Foundation Soils Exploration at A-107 Surfside Avenue, Seal Beach, CA 90740 (Job No. F-10841-07)* prepared by Geo-Etka, Inc. dated June 20, 2007; Notice of Application Submittal & Invitation to Join as Co-Applicant dated February 23, 2008; Letter from Commission staff to Marshall Ininns Design Group dated February 13, 2008; Letter from Marshall Ininns Design Group to Commission staff dated March 19, 2008; Letter from Commission staff to Marshall Ininns Design Group dated April 24, 2008; and *Coastal Hazard and Wave Runup Study, A-107 Surfside Avenue, Seal Beach, CA* prepared by *Geosoils, Inc.* dated June 2007.

#### **LIST OF EXHIBITS**

- 1. Location Map
- 2. Foundation/Roof/Site/Drainage Plan
- 3. Floor Plans
- 4. Elevation Plans
- 5. Lot Line Adjustment Plan

#### **STAFF RECOMMENDATION:**

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

#### **MOTION:**

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a <u>YES</u> vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

# **RESOLUTION:**

# I. APPROVAL WITH CONDITIONS

The Commission hereby <u>APPROVES</u> a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

#### II. STANDARD CONDITIONS

- 1. <u>Notice of Receipt and Acknowledgment.</u> The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Interpretation.</u> Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment.</u> The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. <u>Terms and Conditions Run with the Land.</u> These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

# 1. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability,

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claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

#### 2. NO FUTURE SHORELINE PROTECTIVE DEVICE

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-08-015 including, but not limited to, the residence, decks, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, garage, decks, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

#### 3. **FUTURE DEVELOPMENT**

This permit is only for the development described in Coastal Development Permit No. 5-08-015. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-08-015. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-08-015 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### 4. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

- All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigations: *Preliminary Foundation Soils Exploration at A-107 Surfside Avenue, Seal Beach, CA 90740 (Job No. F-10841-07)* prepared by Geo-Etka, Inc. dated June 20, 2007.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, all final design and construction plans and evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and

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certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

# 5. <u>FUTURE REMOVAL OF STRUCTURES AND LAND OWNED BY SURFSIDE COLONY, LTD.</u>

By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that in the event that Surfside Colony, Ltd. would seek shoreline protection measures for the herein approved patio and/or decks and not for the principal structure on the applicant's property, the applicant and any successors in interest shall agree to remove the permitted patio and/or decks.

#### 6. DRAINANGE AND RUN-OFF CONTROL PLAN

The applicant shall conform with the drainage and run-off control plan received on August 20, 2008 showing roof drainage and runoff from all impervious areas directed to dry wells or vegetated/landscaped areas. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

# 7. LANDSCAPING-DROUGHT TOLERANT, NON-INVASIVE PLANTS

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (http://www.CNPS.org/), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (http://www.cal-ipc.org/), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: http://www.owue.water.ca.gov/docs/wucols00.pdf).

#### 8. <u>DEED RESTRICTION</u>

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an

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extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

#### 9. CONDITION COMPLIANCE

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause in writing, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

# IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

#### A. PROJECT LOCATION AND DESCRIPTION

The lot is located at A-107 Surfside Avenue in the private community of Surfside Colony, in the City of Seal Beach, Orange County (Exhibit #1). Surfside Colony is a gated residential community comprised of three rows of homes (one of which is beachfront-the "A" row) that parallel the beach and ocean, which are accessed via a private road system. The subject site is a beachfront lot located between the first public road and the sea. There is an approximately 350-foot wide sandy beach between the subject property and the mean high tide line. The lot size is 1,605 square feet and the City of Seal Beach Zoning Code designates use of the site for Residential Low Density and the proposed project adheres to this designation. The proposed development is in an existing private, gated residential community, located south of the Anaheim Bay east jetty and is consistent with development in the vicinity and prior Commission actions in the area.

The applicant is proposing the demolition of an existing single-family residence and construction of a new ocean-fronting, 3,254 square foot, three-story single-family residence and 505 square feet of seaside deck/patio areas and an attached 420 square foot two (2)-car garage (Exhibits #2-4). The 1<sup>st</sup> floor patio and 2<sup>nd</sup> floor deck are located on the seaward side of the new residence and will extend a maximum 10-feet seaward beyond the residential property line and the 3<sup>rd</sup> floor deck will extend a maximum 6'-8" beyond the property boundary, into/over land that is leased by the Surfside Colony, Ltd. to the applicant. The decks will have a 3-foot high railing. Grading will consist of 123 cubic yards or recompaction, which will balance on site. Drainage from the roof drains and surface drainages will be directed onto permeable surfaces before entering the main storm drain system. The foundation for the residence will consist of caissons and grade beams.

As noted above, the proposed residence is located along a segment of coastline with a wide sandy beach. The site is also protected by a revetment (as are all the oceanfront residences in Surfside Colony that are upcoast of unit A-91). However, the applicant's wave run up analysis has concluded that the proposed development does not rely upon the existing shoreline protection and because the proposed structure is founded on piles that elevate the structure above the height of any flood waters, there is no "...need for any form of shore protection in the future." Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. Thus, the Commission imposes Special Condition No. 2.

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Additionally, the applicant is requesting an after-the-fact approval to move the seaward property line of their property 0.90 feet seaward, which will add a 25' (I) x 0.90' (w)(deep) portion of land to the ocean side of the property. The 25-foot (I) by 0.90-foot (w) portion added to the residential lot on the seaward side will be taken from Surfside Colony's approximately 80-foot wide strip of land described briefly in the first paragraph above and described in detail below (Exhibit #5). The applicant states that this after-the-fact development took place years ago. Surfside Colony, Ltd. and the residential lot owners have in the past performed similar types of lot-line adjustments on many of the residential lots along the "A" row in the community. The reason for these lot line adjustments was that Surfside Colony, Ltd. wanted to widen their interior street by giving inches or feet to the homeowner at the rear (towards ocean) in trade for the equal land at the street side so the interior street could be made wider to better handle emergency vehicles. However in this case Surfside Colony concluded that the street was wide enough in this area to handle emergency vehicles, thus, no additional transfer of land on the street side was necessary. Nevertheless, Surfside Colony allowed the residential lot owner to move its property line seaward, in alignment with the adjacent lots, for private equity purposes. The minimal 0.90-foot lot extension would encroach onto the beach on property owned by the Surfside Colony, Ltd., as discussed above. However, this encroachment would not adversely impact lateral public access to the beach as public access seaward of the portion of the beach owned by Surfside Colony, Ltd. would remain and still be accessible.

A pre-Coastal (1966) boundary agreement between Surfside Colony, Ltd. and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside Colony. As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80-feet in width, adjacent to/seaward of the homes fronting the ocean. The proposed project has decks and a patio area which encroach a maximum 10-feet seaward beyond the subject site's seaward property line onto a strip of land owned by Surfside Colony, Ltd. (which serves as the homeowners' association). Surfside Colony, Ltd. leases its property to the adjacent homeowners for construction of patios. Enclosed living area is not allowed to encroach past the individual homeowner's seaward property line onto Surfside Colony land. Although the lot line adjustment described above will move the private property line boundary 0.90 feet seaward of its current location, the land transfer will bring the seaward lot line on the subject site into alignment with the adjacent lots. Furthermore, the proposed home, although being moved slightly seaward of the footprint of the existing home, will not encroach any further seaward than the adjacent homes. The applicant has obtained a lease from Surfside Colony, Ltd. for the proposed deck encroachment. The applicant has invited Surfside Colony, Ltd. to join as co-applicant; however, Surfside Colony, Ltd. has not chosen to join. In past permits, the Commission has consistently allowed the seaward property line of individually owned beachfront lots in Surfside Colony to serve as the enclosed living area stringline. The Commission has also consistently allowed the seaward edge of the 10-foot wide strip of land owned by Surfside Colony, Ltd. to serve as the deck stringline. These stringlines serve to limit encroachment of development onto the beach. The proposed development would conform to these stringlines.

The beach seaward of Surfside Colony's land is public and available for lateral public access and recreation. Vertical access to the beach is available at the end of Anderson Street to the east of the Surfside Colony community. In addition, the Commission conditioned permit P-75-6364 to allow public access through the gates at the southeastern end of Surfside Colony during daylight hours.

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Variance 07-5 was obtained from the City of Seal Beach Planning Commission to maintain an existing primary access stairway to the second floor, which is located within the required side yard setback area at A-107 Surfside Avenue. Retention of the encroachment into the side yard setback will not adversely affect public views.

#### B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

## C. <u>DEVELOPMENT</u>

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

#### D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

# E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### F. DEED RESTRICTION

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To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

#### G. VIOLATION

Development has occurred on the subject site in the form of a lot-line adjustment which moved the seaward property line of the subject residential property 0.90 feet seaward, which added a 25' (I)  $\times$  0.90' (w)(deep) portion of land to the ocean side of the residential property without a coastal development permit.

To ensure that the unpermitted development component of this application is resolved in a timely manner, **SPECIAL CONDITION NO. 9**, which requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 90-days of Commission action. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### H. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

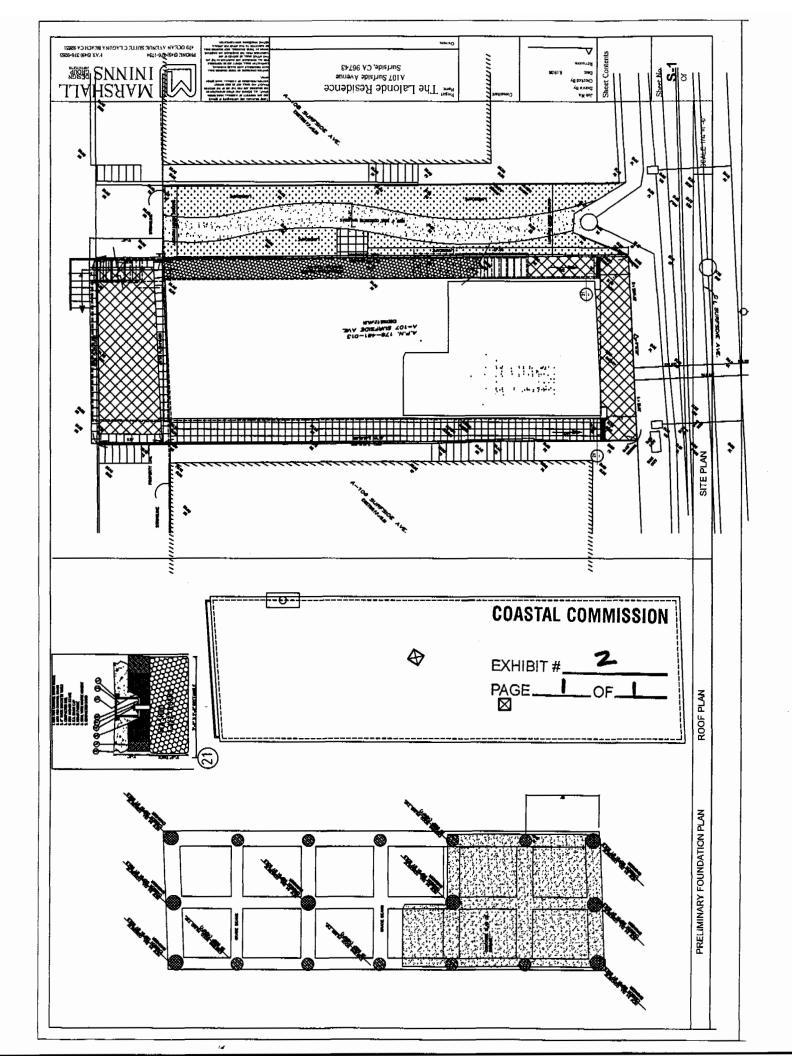
#### I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

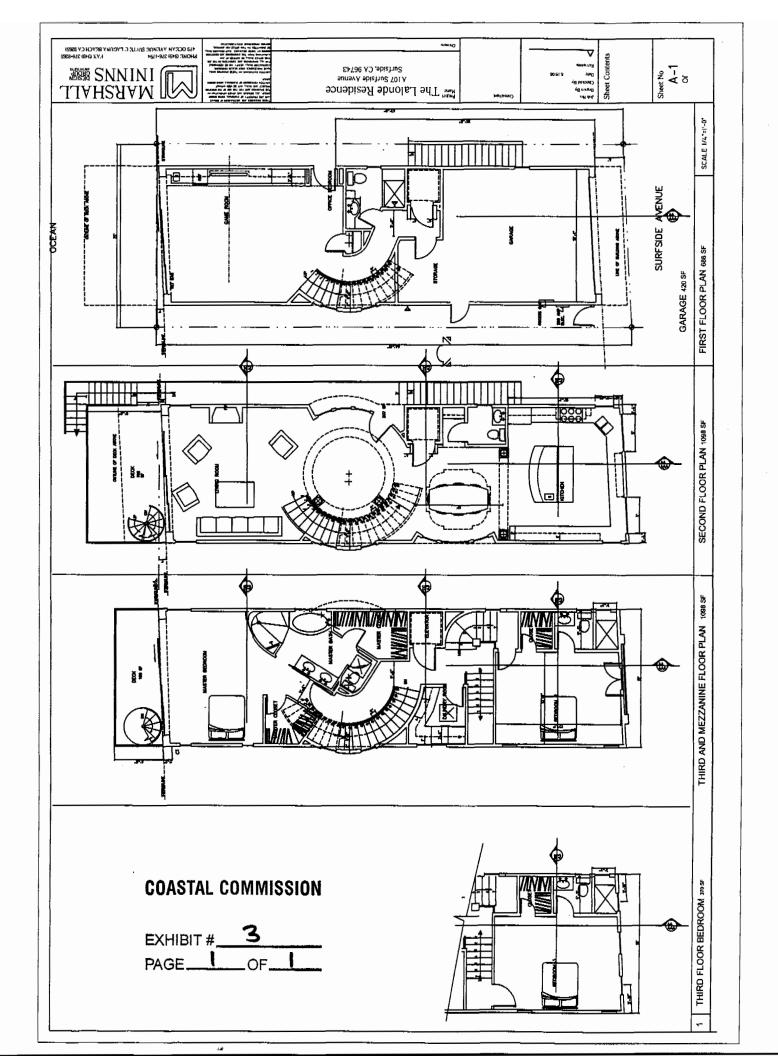
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have

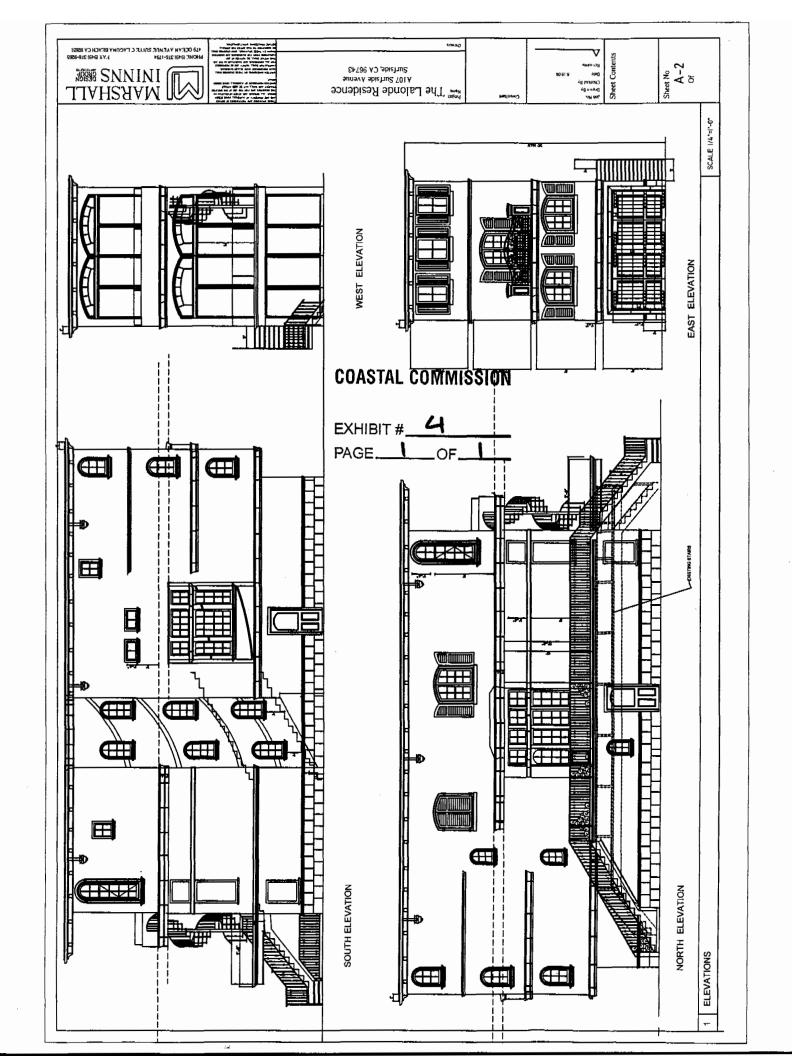
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on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**SMA-107 SURFSIDE AVENUE** MOSANDERSON PACIFIC COAST HIGHWAY SURFSIDE COLONY COASTAL COMMISSION Sour Cast Region DECFIVED JAN 1 8 2008 VICINITY MAP COASTAL COMMISSION EXHIBIT #\_\_\_\_OF\_\_\_







# EXHIBIT B LOT LINE ADJUSTMENT NO. LL 96-1

OWNERS	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
LALONDE	178-462-13	48
SAVARIRAYAN MED. CORP.	178-462-12	49
YELLIN	178-462-11	50
ARNSTEIN	178-462-4	51 :
DOWNS	178-462-3	52
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(*)	CIVIL	
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PCL. #	AREA S.F.
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49	1544
50	1522
51	1265
50	1975

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# COASTAL COMMISSION

EXHIBIT # PAGE

R.S. 88/19-36

